

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 10583 of 2004

Between:

K.Babu Rao S/o Late Bairagi
Tata, Singbhum Dist., Jarkhand State

..... PETITIONER

AND

The Commissioner, Ichapuram Municipality,
Ichapuram, Srikakulam dist

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any writ, order or direction particularly a writ in the nature of Mandamus directing the respondent not to interfere with the peaceful possession and enjoyment of the petitioner's house bearing No.5-6-54 located at Bungalow street, without following any due process of law by declaring the action of the respondent in taking steps to demolish the house property of the petitioner as arbitrary, illegal and violative of Articles 14, 21 and 300-A of the Constitution of India.

Counsel for the Petitioner: MR.K.R.SRINIVAS, Advocate

**Counsel for the Respondent: MR. DEGALA SRINIVAS, Standing
Counsel for Ichapuram Municipality**

The Court at the admission stage made the following :

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ORDER:

By this writ petition the petitioner seeks to declare the action of the respondent in taking steps to demolish his house bearing door No.5-6-54 located at Bungalow Street, Ichapuram, Srikakulam District, as illegal and violative of Articles 14, 21 and 300-A of the Constitution of India.

The petitioner alleges that he is the owner of the property in question. The officials of the respondent approached him on 17-6-2004 and without following due process of law, threatened and warned to demolish his house for the purpose of laying a road across the said house. The petitioner complained that the action of the respondent is contrary to the Division Bench Judgment of this Court rendered by their Lordships Honourable Sri Justice N.Y. Hanumanthappa and Honourable Sri Justice B.V. Ranga Raju in W.P. No.21198 of 1997 and Batch dated 3-2-1998. Assailing the impugned action of the respondent, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent and with their consent, the writ petition itself is taken up for final disposal at the admission stage.

The learned Standing Counsel for the respondent submitted that on apprehension only the petitioner filed the present writ petition, and that the officials of respondents are following due process of law before acquiring any land or before demolishing any structures for the purpose of road widening or laying of any road.

The Division Bench dealing with large number of cases where for the purpose of road widening or laying of any road, the Revenue, Panchayat Raj and Municipal authorities sought to demolish the houses or structures abutting the road, issued certain guidelines which are as under:

- 1) Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.
- 2) If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment of unauthorized occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.
- 3) In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.

- 4) If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.
- 5) In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.
- 6) If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status-quo obtaining as on today regarding the structures.

Sri D. Srinivas, learned Standing Counsel appearing for the respondent, does not dispute the legal position.

Accordingly, the writ petition is disposed of directing the respondent to follow the guidelines issued in the above mentioned judgment. No costs.

N.V. RAMANA, J

Date: 25-06-2004

SVV

To

1. The Commissioner, Ichapuram Municipality,
Ichapuram, Srikakulam District.
2. Two CD copies